IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.193 of 2005

1. Smt. Anandi Bapu Chawan ... Appellants.
and Ors.
V/s.
Shri Shripati Ramchandra Patil ... Respondent.

Shri P.D. Dalvi for the Appellants.

Shri R.S. Apte with Shri N.R. Bubna for the Respondent.

CORAM: ABHAY S.OKA J.
28th April, 2005

P.C.

1. Heard the Advocates appearing for the parties. This Second Appeal is filed by the original Defendants in a suit filed by the respondent/plaintiff. A decree for possession has been passed in favour of the Respondent-Original Plaintiff and the same has been confirmed by the Appellate Court. The case of the Respondent is that the suit house was owned by one Shankar Patil and a registered sale deed was executed by the Shankar Patil in favour of the respondent/plaintiff. The Respondent permitted the said Shankar to occupy the suit house as they were closely related. The case of the Respondent is that the Appellants were residing in the suit house alongwith Shankar. The suit was filed after the demise of Shankar and the defence of the Appellants was that they were the tenants in respect of the

suit property. The case of the respondent/plaintiff was that Shankar was merely in a permissive possession of the suit house and therefore the possession of the present appellants/defendants was illegal.

2. After considering the oral and documentary evidence on record, the Courts below have held that the respondent is the owner of the suit property and deceased Shankar was merely in permissive possession of the suit property.

3. Shri Dalvi for the Appellants relied upon the oral evidence and in particular the oral evidence of the Plaintiff. He submitted that there is an admission given by the Plaintiff that Shankar had let out some portion of the property to the Appellants. He, therefore, submitted that the suit filed by the Respondent was not maintainable. The so called admission of the plaintiff is considered by the Trial Court. The deceased Shankar sold the suit property in 1973 to the Respondent. It is not the case of the appellants they were inducted as tenants before the property was sold to the Respondent and therefore it is obvious that after the year 1973, Shankar could not have inducted the Appellants as Tenants.

4. No substantial question of law arises in this

Appeal. Hence the Appeal is liable to be dismissed. Shri P.D. Dalvi appearing for Appellants prays for longer time to vacate the suit premises. The said request is opposed by the Respondent. Considering the facts and circumstances of the case reasonable time deserves to be granted.

5. Hence, I pass the following order:-

1. Appeal is dismissed with no order as to costs.

2. The decree of the Trial Court for possession shall not be executed till 31st March, 2006 subject to the Appellants filing usual undertaking in this Court within 6 weeks from today. If undertaking is not filed within the stipulated time, decree for possession shall become executable forthwith.

3. Parties to act on an authenticated copy of this order.

4. In view of the above order Civil Application no. 409 of 2005 does not survive and is rejected.